

EXHIBIT I

- 1 -

1
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481 (RDD); Adv. Proc. No. 07-02619 (RDD);

5 Adv. Proc. No. 07-02242 (RDD); Adv. Proc. No. 07-02256 (RDD);

6 Adv. Proc. No. 07-02333 (RDD); Adv. Proc. No. 07-02580 (RDD);

7 Adv. Proc. No. 07-02661 (RDD); Adv. Proc. No. 07-02743 (RDD);

8 Adv. Proc. No. 07-02768 (RDD); Adv. Proc. No. 07-02769 (RDD);

9 Adv. Proc. No. 07-02790 (RDD); Adv. Proc. No. 07-02076 (RDD);

10 Adv. Proc. No. 07-02084 (RDD); Adv. Proc. No. 07-02096 (RDD);

11 Adv. Proc. No. 07-02125 (RDD); Adv. Proc. No. 07-02177 (RDD);

12 Adv. Proc. No. 07-02188 (RDD); Adv. Proc. No. 07-02211 (RDD);

13 Adv. Proc. No. 07-02212 (RDD); Adv. Proc. No. 07-02236 (RDD);

14 Adv. Proc. No. 07-02250 (RDD); Adv. Proc. No. 07-02262 (RDD);

15 Adv. Proc. No. 07-02270 (RDD); Adv. Proc. No. 07-02291 (RDD);

16 Adv. Proc. No. 07-02328 (RDD); Adv. Proc. No. 07-02337 (RDD);

17 Adv. Proc. No. 07-02348 (RDD); Adv. Proc. No. 07-02432 (RDD);

18 Adv. Proc. No. 07-02436 (RDD); Adv. Proc. No. 07-02449 (RDD);

19 Adv. Proc. No. 07-02479 (RDD); Adv. Proc. No. 07-02525 (RDD);

20 Adv. Proc. No. 07-02534 (RDD); Adv. Proc. No. 07-02539 (RDD);

21 Adv. Proc. No. 07-02551 (RDD); Adv. Proc. No. 07-02581 (RDD);

22 Adv. Proc. No. 07-02597 (RDD); Adv. Proc. No. 07-02618 (RDD);

23 Adv. Proc. No. 07-02623 (RDD); Adv. Proc. No. 07-02659 (RDD);

24 Adv. Proc. No. 07-02672 (RDD); Adv. Proc. No. 07-02702 (RDD);

25 Adv. Proc. No. 07-02723 (RDD); Adv. Proc. No. 07-02743 (RDD);

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1 Adv. Proc. No. 07-02744 (RDD); Adv. Proc. No. 07-02750 (RDD);
2 Adv. Proc. No. 07-02188 (RDD)
3 - - - - -x
4 In the Matter of:
5 DPH HOLDINGS CORP., et al.,
6 Reorganized Debtors.
7 - - - - -x
8 DELPHI CORPORATION, et al.,
9 Plaintiffs,
10 -against-
11 SETECH INC., et al.,
12 Defendants.
13 - - - - -x
14 DELPHI CORPORATION, et al.,
15 Plaintiffs,
16 -against-
17 DUPONT COMPANY, et al.,
18 Defendants.
19 - - - - -x
20 DELPHI CORPORATION, et al.,
21 Plaintiffs,
22 -against-
23 ECO-BAT AMERICA LLC,
24 Defendant.
25 - - - - -x

- 3 -

1 - - - - -x
2 DELPHI CORPORATION, et al.,
3 Plaintiffs,
4 -against-
5 GLOBE MOTORS INC.,
6 Defendant.
7 - - - - -x
8 DELPHI CORPORATION, et al.,
9 Plaintiffs,
10 -against-
11 PHILIPS SEMICONDUCTOR, et al.,
12 Defendants.
13 - - - - -x
14 DELPHI CORPORATION, et al.,
15 Plaintiffs,
16 -against-
17 SUMMIT POLYMERS INC.,
18 Defendant.
19 - - - - -x
20 DELPHI CORPORATION, et al.,
21 Plaintiffs,
22 -against-
23 M & Q PLASTIC PRODUCTS, et al.,
24 Defendants.
25 - - - - -x

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1 - - - - -x
2 DELPHI CORPORATION, et al.,
3 Plaintiffs,
4 -against-
5 RSR CORPORATION, et al.,
6 Defendants.
7 - - - - -x
8 DELPHI CORPORATION, et al.,
9 Plaintiffs,
10 -against-
11 RSR/ECOBAT,
12 Defendant.
13 - - - - -x
14 DELPHI CORPORATION, et al.,
15 Plaintiffs,
16 -against-
17 TYCO et al.,
18 Defendants.
19 - - - - -x
20 DELPHI CORPORATION, et al.,
21 Plaintiffs,
22 -against-
23 AHAUS TOOL & ENGINEERING INC.,
24 Defendant.
25 - - - - -x

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1 - - - - -x
2 DELPHI CORPORATION, et al.,
3 Plaintiffs,
4 -against-
5 A 1 SPECIALIZED SVC & SUPP., INC.,
6 Defendant.
7 - - - - -x
8 DELPHI CORPORATION, et al.,
9 Plaintiffs,
10 -against-
11 A-1 SPECIALIZED SERVICES,
12 Defendant.
13 - - - - -x
14 DELPHI CORPORATION, et al.,
15 Plaintiffs,
16 -against-
17 ATS AUTOMATION TOOLING SYSTEMS INC., et al.,
18 Defendants.
19 - - - - -x
20 DELPHI CORPORATION, et al.,
21 Plaintiffs,
22 -against-
23 CORNING INC., et al.,
24 Defendants.
25 - - - - -x

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1 - - - - -x
2 DELPHI CORPORATION, et al.,
3 Plaintiffs,
4 -against-
5 CRITECH RESEARCH INC.,
6 Defendant.
7 - - - - -x
8 DELPHI CORPORATION, et al.,
9 Plaintiffs,
10 -against-
11 DOSHI PRETTL INTERNATIONAL, et al.,
12 Defendants.
13 - - - - -x
14 DELPHI CORPORATION, et al.,
15 Plaintiffs,
16 -against-
17 D & R TECHNOLOGY LLC, et al.,
18 Defendants.
19 - - - - -x
20 DELPHI CORPORATION, et al.,
21 Plaintiffs,
22 -against-
23 DSSI, et al.,
24 Defendants.
25 - - - - -x

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1 - - - - -x
2 DELPHI CORPORATION, et al.,
3 Plaintiffs,
4 -against-
5 DANOBAT MACHINE TOOL CO. INC.,
6 Defendant.
7 - - - - -x
8 DELPHI CORPORATION, et al.,
9 Plaintiffs,
10 -against-
11 EDS, et al.,
12 Defendants.
13 - - - - -x
14 DELPHI CORPORATION, et al.,
15 Plaintiffs,
16 -against-
17 BP, et al.,
18 Defendants.
19 - - - - -x
20 DELPHI CORPORATION, et al.,
21 Plaintiffs,
22 -against-
23 CARLISLE, et al.,
24 Defendants.
25 - - - - -x

1 - - - - -x
2 DELPHI CORPORATION, et al.,
3 Plaintiffs,
4 -against-
5 GKNS INTERMETALS,
6 Defendant.
7 - - - - -x
8 DELPHI CORPORATION, et al.,
9 Plaintiffs,
10 -against-
11 EX-CELL-O MACHINE TOOLS INC.,
12 Defendant.
13 - - - - -x
14 DELPHI CORPORATION, et al.,
15 Plaintiffs,
16 -against-
17 JOHNSON CONTROLS, et al.,
18 Defendants.
19 - - - - -x
20 DELPHI CORPORATION, et al.,
21 Plaintiffs,
22 -against-
23 NILES USA INC., et al.,
24 Defendants.
25 - - - - -x

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1 - - - - -x
2 DELPHI CORPORATION, et al.,
3 Plaintiffs,
4 -against-
5 METHODE ELECTRONICS INC., et al.,
6 Defendants.
7 - - - - -x
8 DELPHI CORPORATION, et al.,
9 Plaintiffs,
10 -against-
11 MICROCHIP,
12 Defendant.
13 - - - - -x
14 DELPHI CORPORATION, et al.,
15 Plaintiffs,
16 -against-
17 HEWLETT PACKARD, et al.,
18 Defendants.
19 - - - - -x
20 DELPHI CORPORATION, et al.,
21 Plaintiffs,
22 -against-
23 OLIN CORP,
24 Defendant.
25 - - - - -x

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1 - - - - -x
2 DELPHI CORPORATION, et al.,
3 Plaintiffs,
4 -against-
5 INTEC GROUP,
6 Defendant.
7 - - - - -x
8 DELPHI CORPORATION, et al.,
9 Plaintiffs,
10 -against-
11 VALEO, et al.,
12 Defendants.
13 - - - - -x
14 DELPHI CORPORATION, et al.,
15 Plaintiffs,
16 -against-
17 VANGUARD DISTRIBUTORS,
18 Defendant.
19 - - - - -x
20 DELPHI CORPORATION, et al.,
21 Plaintiffs,
22 -against-
23 VICTORY PACKAGING, et al.,
24 Defendants.
25 - - - - -x

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1 - - - - -x
2 DELPHI CORPORATION, et al.,
3 Plaintiffs,
4 -against-
5 WAGNER-SMITH COMPANY,
6 Defendant.
7 - - - - -x
8 DELPHI CORPORATION, et al.,
9 Plaintiffs,
10 -against-
11 WELLS FARGO BUSINESS, et al.,
12 Defendants.
13 - - - - -x
14 DELPHI CORPORATION, et al.,
15 Plaintiffs,
16 -against-
17 SELECT TOOL & DIE CORP.,
18 Defendant.
19 - - - - -x
20 DELPHI CORPORATION, et al.,
21 Plaintiffs,
22 -against-
23 SHUERT INDUSTRIES INC.,
24 Defendant.
25 - - - - -x

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1 - - - - -x
2 DELPHI CORPORATION, et al.,
3 Plaintiffs,
4 -against-
5 SUMITOMO, et al.,
6 Defendants.
7 - - - - -x
8 DELPHI CORPORATION, et al.,
9 Plaintiffs,
10 -against-
11 TECH CENTRAL,
12 Defendant.
13 - - - - -x
14 DELPHI CORPORATION, et al.,
15 Plaintiffs,
16 -against-
17 PRUDENTIAL RELOCATION, et al.,
18 Defendants.
19 - - - - -x
20 DELPHI CORPORATION, et al.,
21 Plaintiffs,
22 -against-
23 LDI INCORPORATED,
24 Defendant.
25 - - - - -x

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1 - - - - -x
2 DELPHI CORPORATION, et al.,
3 Plaintiffs,
4 -against-
5 M & Q PLASTIC PRODUCTS, et al.,
6 Defendants.
7 - - - - -x
8 DELPHI CORPORATION, et al.,
9 Plaintiffs,
10 -against-
11 REPUBLIC ENGINEERED PRODUCTS, et al.,
12 Defendants.
13 - - - - -x
14 DELPHI CORPORATION, et al.,
15 Plaintiffs,
16 -against-
17 RIECK GROUP LLC,
18 Defendant.
19 - - - - -x
20 DELPHI CORPORATION, et al.,
21 Plaintiffs,
22 -against-
23 CRITECH RESEARCH INC.,
24 Defendant.
25 - - - - -x

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U.S. Bankruptcy Court
300 Quarropas Street
White Plains, New York

July 22, 2010

10:20 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

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1 this point, but to me the Constitutional issue, you know, the
2 due-process issue here, is not so much the running of time as
3 the issue of whether and how the defendants got notice of the
4 Rule 4 motions. If they didn't get notice, then it's wide
5 open. If they did get notice, I think there's a 60(b) hurdle.
6 But if they didn't get notice, it's wide open and I should look
7 at it as whether, you know, it was appropriate to have entered
8 those orders. And they should have all their -- you know,
9 their right to say they shouldn't have been entered.

10 MS. SCHWEITZER: Right. Your Honor, I think Your
11 Honor -- as you're raising, there are very difficult questions
12 raised when you look at both sides of this argument. You
13 raised several points and I'd like to take some of them in
14 turn. The first one is just the raising of the 4(m) and the
15 fact the Supreme Court has said that there's no per se due-
16 process violation in terms of changing a statute of
17 limitations. That's said in the context of policy decisions of
18 policymakers making a uniform decision that 'We're going to
19 change the rule. We're going to change the law because BP has
20 now intoxicated the entire Gulf of Mexico and we need to say
21 it's not fair that people have a year to bring those claims.'
22 There's been no grand policy decisions here.

23 And in fact the debtors didn't need more time to bring
24 the claims. The debtors said 'I'll file these claims in a
25 timely manner.'

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1 smoothly with you, I'm going to say' --

2 THE COURT: But, again, isn't that on a case-by-case
3 basis? I mean, I -- as far as I can see, there's one case that
4 concludes that 4(m) relief was improperly granted and that case
5 wasn't on due process grounds. The Ninth Circuit just said,
6 'You know, we don't really set a standard for when it's
7 improperly granted, but it was improperly granted.' So, I
8 mean, it just seems to me that it's much more of a case-by-case
9 analysis, depending on the, you know, the harm that happened to
10 people.

11 MS. SCHWEITZER: Right. Well, I guess --

12 THE COURT: With the exception -- let me stop you.

13 MS. SCHWEITZER: Okay.

14 THE COURT: With the exception that under Rule
15 60(b)(4), if someone really didn't get notice of the extension
16 motions, then it would seem to me they should be able to argue
17 to me as if the motions were being made right now, although
18 I'll hear the debtors on that. But, that seems to be the way
19 to look at it.

20 MS. SCHWEITZER: Right. Well, Your Honor --

21 THE COURT: And then, the notice that would trigger
22 the Rule 60(b)(4) analysis would be due process notice and
23 consistent with not only Espinosa, but Mulane and the like.
24 It's true, if -- if the notice was buried or confusing or the
25 like, then I would understand that, too, as a violation of due

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1 Requiring for them to do all those things seems to me
2 to be the minimum of fairness --

3 THE COURT: Well, look, it's a motion for leave to
4 amend the complaint on unusual circumstances. It's really
5 their risk if I turn them down again, right? So --

6 MR. WINSTEN: My only point was that it should be
7 Iqbal plus, not Iqbal minus.

8 THE COURT: Well, I don't know what that means. And,
9 frankly, I think the Supreme Court's been pretty careful not to
10 turn Iqbal into a plus.

11 MR. WINSTEN: Right.

12 THE COURT: So --

13 MR. WINSTEN: But these are our --

14 THE COURT: But I think that the risk of being turned
15 down on the basis of the complaint still isn't good enough is a
16 serious enough -- the consequences of that are serious enough
17 so I assume that the plaintiffs are going to be pretty careful.

18 MR. WINSTEN: A suggestion when we get there is that
19 they ought to attach a draft --

20 THE COURT: Well, you have to do that.

21 MR. WINSTEN: Yes. So we know --

22 THE COURT: Yeah, absolutely.

23 MR. WINSTEN: -- what the form's going to be.

24 THE COURT: Got to do that.

25 MR. WINSTEN: Let me move to assumed contracts. This

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1 is another way in which you can --

2 THE COURT: Well, I don't think there's any issue on
3 this, right? How about if the debtors acknowledge that if the
4 contract has been assumed there's no preference?

5 MR. WINSTEN: Well, what's interesting, Your Honor, is
6 we --

7 THE COURT: Well, let me just -- is there -- is that
8 an issue?

9 MR. GEOGHAN: There's no debate about that, Your
10 Honor. The concept we all agree on; the problem has been in
11 corroborating the information that's been supplied. And what
12 we've done --

13 THE COURT: Okay.

14 MR. GEOGHAN: -- in any instance where a defendant has
15 said 'you have assumed our contract and the preference payment
16 that you're seeking to recover was made pursuant to that
17 contract' is we've compared notes and tried to get to the
18 bottom of it and where, in fact, that's the case then we
19 voluntarily dismiss either the particular claim or the action
20 as a whole if all of the claims were pursuant to an assumed
21 contract. So there's no conceptual disagreement.

22 MR. WINSTEN: Well, there is in this sense, Your
23 Honor, because we have three clients who had assumed contracts:
24 MSX, GKN and Valeo. Take MSX that has four -- there's a four
25 million preference claim against them. We believe it's all as

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1 to assumed contracts. We file our motion. Not one word in
2 their brief in opposition in any way opposing dismissal of
3 those claims because they're assumed contracts. Not one word
4 in opposition. We give them a proposed order, 'please agree
5 that to the extent this claim is based upon transfers as to
6 these contracts, we're not seeking a dismissal of entirety. To
7 the extent your claim is based upon transfers with respect to
8 these assumed contracts, they're out of the case'. They won't
9 agree to do it.

10 Now, as to Valeo and GKN, which is represented by the
11 Togut firm, rather than just being silent, as the Butzel firm
12 has been as to MSX, the Togut firm says 'none of these were in
13 respect to assumed contracts; it's pointless to do so'. Our
14 view is we don't need to worry about that now. We have a hot
15 disagreement as to whether these were transfers with respect to
16 assumed contracts. All we're looking for is a plain vanilla
17 order that says 'to the extent any of these transfers were with
18 respect to these identified assumed contracts in our motions,
19 they're out of the case'. That's all. We can start out later.

20 THE COURT: But if there's a factual dispute as to
21 whether it was assumed or not, what does the order do? It
22 doesn't say anything.

23 MR. WINSTEN: Well, they're not even recognizing the
24 point I gave you.

25 THE COURT: No, he just did. And he would have to;

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1 it's the law.

2 MR. WINSTEN: Is the Togut firm recognizing your
3 point?

4 THE COURT: He said that in his pleading.

5 MR. GEOGHAN: We've recognized the point, Your Honor.
6 We were asked the question, we provided the information --

7 THE COURT: He recognizes the legal -- he recognized
8 the legal point.

9 MR. GEOGHAN: -- the contract numbers; everything in
10 support.

11 THE COURT: The law's clear on that -- I just ruled on
12 this about four months ago in Coudert Brothers in pretty
13 egregious circumstances so if the plan trustee lost there, he's
14 going to lose here too if the contract was, in fact, assumed.
15 But there's the issue of whether it was, in fact, assumed.

16 MR. FISHER: An example, though, Your Honor, of how we
17 really need to nail this down --

18 THE COURT: Well, that goes to the complaint.

19 MR. FISHER: Well, yeah, exactly. We've asked the
20 Togut firm for that information. They've given us information
21 but none of it's linked to purchase orders; none of it's --
22 it's all just them saying none of them --

23 THE COURT: Well, that's why you need show the
24 antecedent debt in the complaint.

25 MR. WINSTEN: You got it. Exactly. Just another

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1 reason why.

2 THE COURT: Okay.

3 MR. GEOGHAN: Your Honor, if I may just briefly in
4 regard to that last statement; it was not wholly accurate. We
5 provided all the remittance invoice information and the
6 purchase orders.

7 THE COURT: I read the correspondence. I think
8 there's a -- well, but it should be in the complaint.

9 MR. GEOGHAN: Correct, Your Honor. Counsel is simply
10 disagreeing without -- reasonable.

11 THE COURT: Okay. All right.

12 MR. GOTTFRIED: One very quick point, Your Honor. And
13 probably it's self-evident but to the extent that the debtors
14 are going to be obligated to replead, it might be extremely
15 helpful in connection with the contract assumption issue if the
16 debtors identify, when they're identifying specific antecedent
17 debt, which PO numbers the transfers relate to. This way
18 defendants will be able to match those listed PO numbers
19 against the PO numbers that were assumed or rejected and
20 they'll note whether or not it falls within it.

21 THE COURT: I'm not going to make a ruling on that at
22 this point.

23 MR. GOTTFRIED: Okay. Well, I wasn't asking for you
24 to necessarily rule on it.

25 THE COURT: But you didn't see it when he was taking a

1 note. Mr. Fisher was.

2 Okay. So are we now at sort of one off for individual
3 issues? I think we are.

4 MR. WINSTEN: I think the only general issue that I
5 think is left, Your Honor, I.W. Winsten again, is the laches
6 issue, and there what I would say is I think I can do it in
7 thirty seconds.

8 That while we believe you to dismiss in total on the
9 laches basis, to the extent the Court disagrees and believes
10 it's fact specific and case specific, then I think as to the
11 eighty-three moving parties -- eighty-three moving cases, we
12 would urge the Court, at the front end, to have a threshold
13 evidentiary hearing on the issue of prejudice. That we ought
14 not to move to the merits until we first have a prejudice
15 hearing because it's not fair to any of us to go to the merits.

16 THE COURT: Okay. What's your view on that, Mr.
17 Fisher?

18 MR. FISHER: I'm reluctant, Your Honor, to have waves
19 of threshold issues to work through on a mass basis because --

20 THE COURT: Well, wouldn't this be the threshold
21 issue? I mean, it seems to me that the thrust of your
22 argument, generally, in response to this collective -- well,
23 not the abandonment res judicata, but the 4(m) Rule 60 due
24 process point is that prejudice can be dealt with on a case-by-
25 case basis. It seems to me that that -- and I think your